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IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-784

DOROTHY TAYLOR, CHARLES ELLOIE, ISSAC REYNOLDS and CELESTINE FRANKLIN, on behalf of themselves and other similarly situated,

Plaintiffs-Petitioners,

versus

JOHN J. McKEITHEN, Governor of the State of Louisiana, C. C. "TADDY" AYCOCK, Lieutenant Governor of the State of Louisiana, JOHN S. GARRETT, Speaker of the House of Representatives, JACK P. F. GREMILLION, Attorney General of the State of Louisiana, DOUGLAS FOWLER, State Custodian of Voting Machines for Louisiana, and THE ORLEANS DEMOCRATIC EXECUTIVE COMMITTEE,

Defendants-Respondents,

VICTOR BUSSIE, JOHN C. BRIGHT, A. P. "PAT STODDARD, T. K. STIZLEIN and LOUIS BERRY CARROLL G. MILLER, WALTER M. RUTZ, PERRIN RITTINER, BENJAMIN FORBES, SR., MRS. LILLIE BRIDGES, EMMITT J. DOUGLAS, DR. D'ORSAY BRYANT, ARTHUR J. CHAPITAL, A. C. DUBRIEL, ROOSEVELT HILL, REV. HERMAN FARR and FLORENCE FLOYD,

Plaintiffs-Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioners above mentioned respectfully pray that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Fifth Circuit entered herein on September 14, 1971.

OPINIONS BELOW

The opinions of the district court and the Court of Appeals have not been reported. The opinion of the Court of Appeals is printed below at page 40 . The opinion of the district court is printed below at page .

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on September 14, 1971. On November 30, 1971, the Court of Appeals entered an order denying a petition for rehearing. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in overturning senate districts 2, 3, 4 and 5 of the district court fashioned reapportionment plan in the absence of a finding that this segment of the plan was constitutionally deficient.

2. Whether the Court of Appeals erred in modifying senate districts 2, 3, 4 and 5 to conform to a plan suggested by the four incumbent senators, which the lower court found to be racially discriminatory.

STATEMENT OF THE CASE

On June 14, 1971 the Governor of Louisiana signed into law Louisiana Acts 106 and 108 reapportioning the legislature in light of the 1970 Census. On July 16, 1971, present petitioners, who are black voters of Louisiana, filed this action challenging the 1971 Acts as racially discriminatory and violative of the one-man, one-vote mandate and requesting that the Court devise a constitutional plan. The case was consolidated with four other reapportionment suits, and proceedings were held in abeyance pending a determination of the Acts by the Attorney General of the United States under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. On August 20, 1971, the Attorney General objected to the Acts as a whole, as being racially discriminatory in purpose or effect.

The district court appointed a special master to draw a plan of reapportionment and on September 8, 1971, conducted a hearing. On September 10, 1971, the district court entered an opinion (Appendix "B") finding the 1971 Acts to be invalid by virtue of the Section 5 objection and establishing new districts as proposed by the special master. The Court of Appeals, by order of September 14, 1971, upheld the district court in large parts, but modified senate districts 2, 3, 4 and 5 at the request of the incumbent senators of that area (acting as special counsel for the State). Petitioners seek review of this modification, ordered by paragraph 3(a) of the September 14, 1971 judgment of the Court of Appeals.

The findings of the district court in regarding these four districts include:

1. That the most recent expressions of the Louisiana Legislature on reapportionment, Acts 106 and 108 of 1971, were found by the Attorney General of the United States to be racially discriminatory in purpose and effect and objected to as a whole (opinion of the District Court p.16).

2. That the historical policy of the State of Louisiana (extending through Acts 106 and 108 of 1971), has been to deny black citizens access to the political process by drawing electorial districts which minimize their voting strength and that "it was this policy and these 'historical' boundaries that produced but two Negro Legislators since Reconstruction days ... and even they did not sit at the same time ... one succeeded the other." (opinion of the District Court, p. 24; also see, p. 32).

3. "The Plan proposed by the Senators /approved by the Fifth Circuit/ would help perpetuate this 'historical fact' and this State 'policy' while the /District/ Court approved plan would tend to correct this injustice." (opinion of the District Court p. 24).

4. The Senators plan for Districts 2, 3, 4 and 5 (approved by the Fifth Circuit) jumps ward boundaries and crosses natural geographic boundaries to divide a heavily black concentration of population and create two majority white districts (opinion of the District Court p. 26, p. 23).

5. The lower 9th ward is a "heavily Negro" area (opinion of the District Court, p.26),

bounded generally on the West by the 8th ward, on the South by the Mississippi River, on the East by St. Bernard Parish and on the North by "the Mississippi Gulf outlet and a predominantly undeveloped area" (opinion of the District Court p.26). The district court found that the senators' proposed modification split this heavily Negro community (which lies entirely within the 9th ward) into different Senatorial Districts, each now with a white majority, and departed from natural and political boundaries to do it. Approximately one-half of this heavily Negro Community (precincts 9 through 29 of Ward 9) is joined with the heavily white 8th ward, while the remainder is joined with heavily white "New Orleans East" which lies across two natural boundaries. The district court was quite clear in this finding:

> It is also interesting to further compare the Senatorial District 2 proposed by the Senators with the District 2 proposed by the Court approved plan. In the Senators' plan we find a portion of the lower 9th ward, which is heavily Negro, combined with New Orleans East, which is heavily white, with the two areas separated by the Mississippi Gulf outlet and a predominantly under-developed area. In contrast is the Court approved District 2, which combines the lower 9th ward with a similarly inhabited area to the West which results in a compact area in which the Negro population has not been fragmented, and throughout which there is apt to be more of community interest.
>
> (opinion of the District Court p. 26)

6. There is a rational basis for the district court's plan for Senate Districts 2, 3, 4 and 5 (opinion of the district court p. 26).

7. The special master did not employ reverse-gerrymandering to create "black districts" or to maximize black voting strength: "the submissions of plaintiff Taylor tend to show that this special master did not draw a plan primarily to favor the Negro population" (opinion of the district court p. 28).

The full text of the Ruling of the Fifth Circuit on these Senatorial Districts is as follows:

> 3. We affirm the judgment of the district court with the following modifications:
>
> (a) the boundaries of the Senate Districts 2, 3, 4 and 5 are modified so as to conform with the Defendants-Appellants' alternate plan for those districts.

No reasons were given for this modification of the district court order.

REASONS FOR GRANTING WRIT

A. The Plan Of The District Court For Senate Districts 2, 3, 4 And 5 Was Without Constitutional Defect.

Senate districts 2, 3, 4 and 5 in the plan of the district court are compact districts which in all cases do not divide precincts. Wards 1, 2 and 6 of Orleans Parish

are kept in tact, and wards 4, 5, 7, 8 and 9 are divided among two or more districts. The boundary between Senate District 4 and 5 is is undeniably a jagged line.

Evidence by plaintiffs-petitioners at the hearing demonstrated that the result of this configuration was two districts with a black population and voting registration majority (Districts 2 and 4) and two districts with a white population and voter registration majority (Districts 1 and 3). A further result was that two of the incumbent senators resided in District 1 and the other two resided in District 3, spelling certain defeat for two of them.

The Court of Appeals overturned Districts 2, 3, 4 and 5 of the district court's plan without stated reasons. The substitute plan offered by the incumbent senators acting as special counsel, does not have the special standing afforded to legislative enactments. The Senators' substitute plan was merely an effort by incumbents to protect their legislature seats by proposing districts to the Court which would place each of them in a separate district with a safe white majority. The Senators like any party had the burden of demonstrating the constitutional inadequacy of the Court drawn plan. This they failed to do.

The result of the district court plan was two senatorial districts with a black majority. The burden upon the incumbent senators to prove that the court drawn Senate Districts 2, 3, 4 and 5 was a purposeful device to guarantee black representation is at least as strong as the burden upon black plaintiffs under Whitcomb v. Chavis, 403 U.S. 124 (1971) to demonstrate that a particular legislative enactment is a purposeful device to further racial

discrimination.

The Senators relied heavily on the jagged boundary line between Senate Districts 4 and 5 as evidence of such a purpose. The district court found, however, that the line was jagged to conform to precinct boundaries in the area. Making this line perfectly straight would not have altered the racial composition of the districts, but by dividing precincts it would have made it impossible to conduct the First Primary Elections on November 6, 1971. The Senators had the burden of showing at a minimum that the jagged line had the purpose or effect of including or excluding certain racial groups. This they could not and did not do.

B. The Modification Of Senate District 2, 3, 4 And 5 By The Court of Appeals Violates The Fifteenth Amendment.

The district court found that the Senators proposed modification for Senate Districts 2, 3, 4 and 5 were racially discriminatory in purpose and effect. Specifically the district court found that by splitting up the heavy black population concentration of the lower 9th ward and by jumping natural and ward boundaries to do it, the Senators' plan effectively blocked access to the political process for black citizens. The Court of Appeals reversed this finding without stated reasons. The most recent attempt to reapportion by the Louisiana Legislature, Acts 106 and 108 of 1971, had just been rejected as racially discriminatory by the Attorney General acting pursuant to Section 5 of the Voting Rights Act of 1965. The district court was under a clear mandate to devise a plan of reapportionment which not only complied with the one-man, one-vote mandate but also avoided the racial

discrimination of the past. In this context the district court carefully examined the plan of the Senators and found that it did not avoid racial discrimination, but, by dividing the large black community of the lower 9th ward, furthered the racial discrimination of the past.

The district court, having discovered the racially discriminatory features of the Senators' plan, was bound by the decisions of this Court to disallow its implementation. This Court has long held, that the "/Fifteenth/ Amendment nullifies sophisticated as well as simple minded modes of discrimination," Lane v. Wilson, 307 U.S. 268, 275 (1939) and that impairment of voting rights of black citizens cannot be justified by being "cloaked in the garb of realignment of political subdivisions." Gomillion v. Lightfoot, 364 U.S. 339, 345 (1960).

In examining the validity of proposed reapportionment plans the question of deprivation of the right to vote on account of race is a necessary one. Where it is shown under the circumstances of a particular case that an electoral device is racially discriminatory in purpose or effect, that device impermissible. Fortson v. Dorsey, 379 U.S. (1965) 433; Burns v. Richardson, 384 U.S. 73 (1966); Whitcomb v. Chavis, 403 U.S. 124 (1971).

The uncontested history of Louisiana's continuing efforts to bar black citizens from participation in the political process (which extends to the enactment of the 1971 reapportionment acts) suggests that the district court properly scrutinized the Senators' districting proposals to uncover subtle as well as simple minded techniques for barring access

of blacks to the political process.

The district court found that by splitting up the heavy black population concentration of the lower 9th ward, the plan effectively blocked access to the electoral process for black citizens. These districts were designed to continue the policy of Acts 106 and 108 of 1971, a policy of dilution of the voting strength of black citizens of Louisiana.

Senatorial Districts 2, 3, 4 and 5 as approved by the Court of Appeals, fall squarely within the prohibitions of decisions such as Gomillion v. Lightfoot, 364 U.S. 339 (1960); Sims v. Baggett, 247 F. Supp. 96 (M.D. Ala., 1965); and Smith v. Paris, 257 F. Supp. 901 (M.D. Ala., 1966) aff'd., 386 F. 2d 979 (C.A. 5, 1967). They are not like Marion County's districts, which were conceded not to be purposeful devices to further racial discrimination. Whitcomb v. Chavis 403 U.S. 124, 149 (1971). When no black senator is elected to the Louisiana Legislature, it will not be because the votes of blacks were merely "canceled out by defeat at the polls," but because the senatorial districts were designed to prevent a black majority in any one district.

There was "no evidence" in Whitcomb v. Chavis, that "a segment of the population is being denied access to the political process," 403 U.S. at p. 155. In Louisiana, there is uncontestable evidence that the State seeks to deny blacks access to the political process. It was this determination which makes Louisiana subject to Section 5 of the Voting Rights Act of 1965; it was this determination which invalidated Acts 106 and 108 of 1971; and it was this determination which led the district court to reject the modification

proposed for Senate Districts 2, 3,4 and 5.

If the Court of Appeals found a constitutional defect in Senate Districts 2, 3, 4 and 5 of the district court's plan, the proper remedy would have been to return that segment of the plan to the district court with criteria for avoiding racial discrimination. The proper remedy was hardly to substitute a plan which perpetuated purposeful discrimination against black voters.

RELIEF

Because the district court plan for Senate Districts 2, 3, 4 and 5 is interchangeable with the modification of those districts ordered by the Court of Appeals, a reversal of paragraph 3(a) of the September 14, 1971 order of the Court of Appeals would not necessitate the redrawing of any other districts. Should both of the plans for Senate Districts 2, 3, 4 and 5 be found objectionable, the district court could be directed to redraw the districts according to specified criteria, and to order new elections for these four senate seats.

CONCLUSION

Federal Courts in the South are increasingly called on to devise plans of reapportionment which avoid the racial discrimination of the past. This case is the first in which a Federal Court has explicitly dealt with this problem. The district court set out careful and detailed guidelines for devising a racially fair plan of apportionment and applied these guidelines to the various redistricting proposals. The Court of Appeals rejected a significant portion of the district court's plan without comment. In

this case, prompt adjudication is necessary not only to protect valuable voting rights but to remove the confusion caused by the Court of Appeals' unexplained modification. Petitioners therefore pray that the Petition for Certiorari be granted.

Respectfully submitted,

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December, 1971

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing brief have been served upon opposing counsel by mail on the 10th day of December, 1971.

_____

APPENDIX A

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED
SEP 10 1971
BENJAMIN W. REISOR
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

VICTOR BUSSIE, ET AL

VERSUS

THE GOVERNOR OF LOUISIANA, ET AL

CIVIL ACTION

NUMBER 71-202

EMMITT J. DOUGLAS, ET AL

VERSUS

JOHN J. McKEITHEN, Individually and as Governor of Louisiana, et al

CIVIL ACTION

NUMBER 71-206

DOROTHY TAYLOR, ET AL

VERSUS

JOHN J. McKEITHEN, Governor of Louisiana, et al

CIVIL ACTION

NUMBER 71-234

CARROLL G. MILLER, ET AL

VERSUS

GOVERNOR OF LOUISIANA, ET AL

CIVIL ACTION

NUMBER 71-235

VICTOR BUSSIE, ET ALS

VERSUS

THE GOVERNOR OF LOUISIANA, ET ALS

CIVIL ACTION

NUMBER 71-259

FEE
PROCESS
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DKTD
CRDP
HEARING
DOCUMENT NO.

WEST, Chief Judge:

BACKGROUND

In 1966 a suit was filed in this Court involving "the right of Louisiana citizens not to be shortchanged in their vote for members of the state legislature.". See Bannister v. Davis, 263 F.Supp. 202 (1966). As a result of that suit, which was heard by a statutory three judge court, a special session of the Louisiana Legislature was convened and Acts 3 and 4 of the Extra Ordinary Session of 1966 were enacted. Act 3 reapportioned the Louisiana Senate and Act 4 reapportioned the Louisiana House of Representatives. Immediately thereafter the Court entered an order approving the plans for reapportionment contained in Acts 3 and 4 of 1966. The plans for both the House and the Senate contained a mixture of multi-member and single member districts. The Louisiana Legislature has been apportioned according to those Acts up to the present time. Following the 1970 United States census, the Louisiana Legislature, in accordance with the mandate of the Louisiana Constitution, undertook to reapportion itself in accordance with the 1970 census. A Legislative Committee on Re-Apportionment was appointed and worked diligently in an effort to produce a plan which would be in accordance with the 1970 census while at the time time complying with the one man, one vote requirement and the other equal protection requirements of the Fourteenth and Fifteenth Amendments to the United States Constitution. All efforts of the Committee to have a special session

called to consider its plans were to no avail and it was not until the Regular 1971 Session of the Legislature that the question of reapportionment was considered. There was much opposition to the Committee's plans, eminating largely from the Orleans and Jefferson Parish legislators, and it was only after many amendments had been made to the Committee's proposed plan that Acts 106 and 108 of the 1971 Regular Session emerged. The resulting plans were so obviously constitutionally defective that these present consolidated suits were instituted seeking to have Acts 3 and 4 of the Extra Session of 1966 and Acts 106 and 108 of the Regular Session of 1971 declared unconstitutional, null and void, and seeking further to have this Court "fashion a plan" of reapportionment that would be protective of the constitutionally guaranteed rights of the citizens of Louisiana. Since the proposed changes in apportionment contained in Acts 106 and 108 were creatures of the Legislature and not the Court, this Court stayed all proceedings pending submission of the plan to the Attorney General of the United States as required by Sec. 5 of the Voting Rights Act of 1965, 42 U.S.C.A. §1973(c), for a determination as to whether or not the plan was racially discriminatory. This was done, and the Attorney General concluded that the plan was, in many respects, racially discriminatory. This Court whole-heartedly concurred with the findings of the Attorney General. The rejection of the plan by the United States Attorney General automatically rendered Acts 106 and 108 null and void. See Sec. 5 of the Voting Rights

Act of 1965, 42 U.S.C.A. §1973(c). Even if the Attorney General had not found racial discrimination, this Court would have found those Acts unconstitutional for failure to comply with the constitutional requirement of one man, one vote; for employing gerrymandering in its grossest form; for diluting the vote of certain ethnic groups, and for other reasons.

Recognizing the need for expert assistance in this troublesome and complex problem of reapportionment, this Court then appointed Mr. Edward J. Steimel, Executive Director of the Public Affairs Research Council (PAR), as Special Master pursuant to the provisions of Rule 53 of the Federal Rules of Civil Procedure and directed him "to hold hearings, if he deems it advisable, or to receive proposed reapportionment plans from the parties involved in these suits, and to evaluate those plans and to prepare and present to this Court a total, complete plan of reapportionment of the House of Representatives and the Senate of the State of Louisiana which will most nearly comply with the one man, one vote mandate of the United States Supreme Court." Mr. Steimel neither holds nor seeks public office and his expertise in the field of reapportionment is well recognized. The three judge court in Bannister recognized his qualifications in this area when they noted that:

> "[I]n view of the fact that the Public Affairs Research Council has prepared a reapportionment plan for Louisiana that appears, generally speaking, to be fair and rational, the defendants would carry a heavy burden if they should assert that it is impossible to reapportion lawfully unless the size of the legislative body is increased." 263 F.Supp. 202, 208.

Pursuant to this order, the Special Master held four (4) days of hearings during which over 100 persons were heard, including approximately 80 legislators. All proposed plans offered were accepted and evaluated by the Special Master. No one was denied a hearing and no one was denied the opportunity to present suggested plans. After four days of hearings, the Special Master prepared and presented to the Court his findings and conclusions in the form of a "Reapportionment Plan for the Louisiana Legislature", together with maps and supporting exhibits, all of which are filed of record in this case as Exhibits "A" through "W". Thereafter, after a thorough review and evaluation of the Special Master's report, this Court concluded that there was no manifest error therein, and that the proposed plan did, in fact, comply with all of the requirements of law, and that the plaintiffs were, as a matter of law, entitled to the relief which they sought, and that therefore the Plan for Reapportionment presented by the Special Master should be adopted and imposed by the Court upon the Louisiana Legislature. Accordingly, an order to that effect was entered on August 24, 1971, along with written reasons therefor.

In the prayer of plaintiffs' complaint, it was requested that:

> "In a form and manner to be determined by the Court, a plan of reapportionment of the Louisiana Legislature be fashioned and put into effect so as to guarantee to petitioners in the forthcoming elections their rights and privileges as citizens of the United States, to equal protection of the laws secured them by the Constitution and laws of the United States and their civil rights, secured by law."

This, in the opinion of the Court, is precisely what the Order of August 24, 1971, did. Plaintiffs, in whose favor judgment had been rendered, filed a "Motion for New Trial" on August 26, 1971, which motion, for written reasons assigned, was denied on August 27, 1971. Plaintiffs in one suit and defendants in all suits then perfected an appeal to the Fifth Circuit Court of Appeals who, in turn, on September 4, 1971, ordered this Court "to conduct an expedited hearing in open court in compliance with Rule 53(e)(2)." This Order was not received by this Court until September 7, 1971, on which date telegraphic notice was sent to all counsel of record notifying them of a hearing to be held on September 8, 1971 at 10:00 o'clock a.m. All counsel were present for that hearing and at the commencement of the hearing plaintiffs belatedly filed the objections required by Rule 53(e)(2), which were accepted and filed of record. It is the testimony adduced at this hearing of September 8, 1971, that is now before the Court. The question presented is whether or not the report of the Special Master should be accepted by the Court as is, or whether it should be altered and accepted, or whether it should be rejected completely.

THE EVIDENTIARY HEARING OF SEPTEMBER 8, 1971

As set forth in the preceding background analysis, this hearing was held pursuant to the mandate of the Court of Appeals dated September 4, 1971. Counsel for all parties to

these suits were present and participated. Others who, at the last moment, attempted to intervene as parties or to be enrolled as additional counsel of record were denied that privilege on the ground that since the hearing was already underway, these motions simply came too late, but all were permitted to appear as amicus curiae and to file any and all proposed plans for reapportionment that they wished to file. No one was denied this privilege. A full evidentiary hearing was held with no time limits placed on anyone. At the close of the testimony the Court noted that no one had called the Special Master as a witness to question him about the plan which he had presented to the Court. Whereupon the Court announced to all counsel that Mr. Steimel was present in Court and was available to be questioned by anyone who wished to do so. It is quite significant that no one availed himself of this invitation to question Mr. Steimel as to the merits or demerits of the very plan that was supposedly under attack.

Now, as to the specific objections raised to the plan which this Court previously approved and adopted as one complying in every way with announced constitutional standards, it is at once apparent that the major objections come from incumbent state senators from Orleans Parish. It was primarily the objections from this same area that prevented the Legislature at its last regular session from coming up with a plan of its own that could withstand constitutional scrutiny. The

main objection to the court approved plan centers around the newly created senatorial districts numbered two (2) through five (5) in Orleans Parish. However, it must be noted that no witnesses, other than the incumbent senators from this area, were presented in opposition to the new districts. It bears noting also that under the court approved plan, two incumbent senators find themselves having to run against each other in Senate District 5, and two incumbent senators find themselves having to run against each other in Senate District 3, while under the plan they propose, each will have a district of his own. These are the only four witnesses who appeared to urge a change in the proposed Senatorial Districts 2 through 5, and they were apparently not concerned with any other areas of the State because they confined their objections to this area. As a matter of fact, one of the Senators reportedly refused to present objections to the East Baton Rouge redistricting even though that Parish had no counsel of record to represent it. The proposed plan for East Baton Rouge was, however, received by the Court as an amicus curiae offering and thoroughly considered as will hereinafter appear. It is, of course, incumbent upon the Court to keep in mind that those elected to office for specific terms do not thereby acquire a vested interest in the office. Furthermore, we must not lose sight of the fact that members of the Legislature represent people and not parishes, wards, or precincts. It is the people who have the constitutional right at all times to be equally and fairly represented. The office holder has no constitutional right to represent anyone except for the specific term for which he is elected. Therefore, any plan of apportionment, to be constitutionally acceptable, must pass certain basic tests. It must,

within reason, conform to the one man, one vote rule. It must not be so designed as to dilute the voting strength of any person or group. And it must not employ the devise of gerrymandering in order to favor any person or group. When possible, the plan should follow parish and ward lines as well as historical and natural boundaries. But the use of such boundaries cannot be tolerated if either the purpose or the result is to deprive the people of the benefit of the one man, one vote principle or to deprive them of the anti-dilution principle now firmly established in the law. With these principles in mind, let's turn to an analysis of the stated objections to the court approved plan.

The main thrust of the argument of the Senators from New Orleans is that there is no rational basis for the boundaries of Senatorial Districts 2, 3, 4, and 5 as proposed in the court approved plan because they violate parish and ward lines. Exhibit No. 1 and Exhibit No. 2 show Districts 2 through 5 as proposed by Senators Duplantier, O'Keefe, Hickey and Kiefer, the four Senators from this area. Their Exhibits No. 3 and 4 show the same districts as they appear in the court approved plan. While it is true that the proposed changes suggested by the Senators, none of whom, incidentally, are either plaintiffs or defendants in any of these consolidated suits, but are merely counsel of record, would result in districts contained within established ward lines whereas the court approved plan

cuts across ward lines in some instances, nevertheless a closer analysis of the two proposals is required. While as a general proposition, the one man, one vote criteria concerns itself primarily with total population in the district, it is nevertheless necessary to look also at the voter registration figures in the district in order to make a determination as to whether or not the proposal meets the anti-dilution criteria. An analysis of the total population in each of the districts under consideration shows that under the court approved plan, Senate District 2 would have a negro population of 64 per cent; District 3, 16 per cent; District 4, 70.2 per cent, and District 5, 21.7 per cent, while under the plan proposed by the Senators, District 2 would have a negro population of 42.6 per cent; District 3, 43.7 per cent; District 4, 54.4 per cent, and District 5, 42.0 per cent. Thus, under the court approved plan, two of the four districts would have a majority negro population whereas under the Senators' plan, only one district would have a majority negro population. But even more significant is the fact that under the court approved plan, Senate District 2 would have a negro voter registration of 51 per cent; District 3, 18 per cent; District 4, 58 per cent, and District 5, 20 per cent while under the plan proposed by the Senators, District 2 would have a negro voter registration of only 37.6 per cent; District 3, 25.7 per cent District 4, 44.3 per cent; and District 5, 24 per cent. Thus, under the

court approved plan, two of the four districts would have a majority of registered voters of the negro race, with the attendant possibility of electing negroes to the Legislature, while under the Senators' plan, none of the four districts would have a majority of registered negro voters. Thus, while the Senators' plan probably would meet the one man, one vote standard, even though the deviations would be slightly higher than under the court approved plan, it would, in the opinion of this Court, operate to diversify the negro voting population throughout the four districts and thus significantly dilute their vote. Their plan practically eliminates the possibility of a negro being elected from any of the four districts, while the court approved plan at least gives them a fair chance in two out of the four districts. The Senators made much of the need to adhere to "historical" boundaries, which, they assert, are the ward lines in this area. They contend that any deviation therefrom is irrational and contrary to State policy. But, as brought out in the evidence, it was this policy and these "historical" boundaries that produced but two negro legislators since Reconstruction days. During the Twentieth Century only two negroes have sat in the Louisiana Legislature, and even they did not sit at the same time. One succeeded the other. The plan proposed by the Senators would help perpetuate this "historical fact" and this State "policy" while the court approved plan would tend to correct this injustice. Neither

historical boundaries nor state policy nor state constitutional provisions may be used as vehicles by which to deprive the people of their constitutional right to equal protection under the law or of their right to equal participation in the election process. The court approved plan protects these rights. The Senators' plan does not. The court approved plan seeks to protect the rights of the people while the primary purpose of the Senators' plan appears to be the protection of incumbent office holders. The Senators complain about the creation of single member districts. As of the present time, 31 states have found the single member district to be the preferable method of apportionment. In Bannister, this Court recognized the advantages of single member districts and recommended their use. See 263 F.Supp. at p. 209. Single member districts are always to be preferred if the use of multi-member districts tends to dilute the voting strength of any minority group. That such is the case in Louisiana could hardly be denied. By the uniform use of single member districts, and by deviating to some extent from "historical" boundaries, equal participation in the election process is made available to all citizens. The court approved plan, in the opinion of this Court, does that. The plan proposed by the Senators does not. We must give more than lip service to the right to participate in the election process, no matter whose official status might be put in jeopardy thereby. The court approved plan gives meaning to

the "equal protection of the laws" guaranteed by the United States Constitution. The Senators' plan does not. The Senators argue that there is no "rational basis" for the court approved plan. In view of the foregoing, it is understandable why they did not avail themselves of the opportunity to question Mr. Steimel as to the rationale behind the court approved plan. It is also interesting to further compare the Senatorial District 2 proposed by the Senators with the District 2 proposed by the court approved plan. In the Senators' plan we find a portion of the Lower 9th Ward, which is heavily negro, combined with New Orleans East, which is heavily white, with the two areas separated by the Mississippi Gulf Outlet and a predominantly undeveloped area. In contrast is the court approved District 2, which combines the Lower 9th Ward with a similarly inhabited area to the west which results in a compact area in which the negro population has not been fragmented, and throughout which there is apt to be more of a community interest.

While at first blush one might question the many sided perimeter of Senatorial District 4, a closer scrutiny will reveal that this was done in order to follow precinct lines while at the same time keeping Ward 6 intact.

Primarily for these reasons, and for the further reason that there has been no showing of manifest error in the findings of fact of the Special Master, the changes proposed by the New Orleans Senators, as depicted in their Exhibits 1 and 2, to the court approved plan will be rejected.

The next major area of dispute concerns Jefferson Parish. Mr. Francis Laurialla, a member of the House of Representatives from Jefferson Parish, testified as to what he considered to be inequities in the court approved plan. He contends that Jefferson Parish should not have to share four of its allotted representatives with other parishes. According to the 1970 census figures, Jefferson Parish should be entitled to 9 2/3 seats in the House of Representatives. Under the court approved plan, that Parish is given nine seats to be filled entirely by voters within the Parish, and they participate along with other parishes in the election of four other representatives. In one of these districts, Jefferson has a majority of the voting strength and thus, in effect, they may elect ten representatives and play a minor role in the election of three others. They object to the plan placing Ward 2 in House District 54 with the southern part of LaFourche Parish; Ward 6 in District 105 with Plaquemines Parish and the rural part of St. Bernard Parish; part of Ward 7 in District 88 with part of Orleans Parish, and Wards 1 and 2 with a contiguous part of Ward 15 of Orleans Parish. In so arranging these parts of Jefferson Parish, the Special Master gave special consideration to population requirements, community of interests, accessibility of areas joined, and the resulting disruption of other districts if alternatives were resorted to. Representatives of Jefferson Parish presented no alternative plan to either the Special Master or to the Court and freely admitted that they had none. Jefferson Parish has its full share of representation under the court approved plan, and no manifest error has been shown in the plan submitted by the Special Master insofar as Jefferson Parish is concerned. Since no suggested alternative was

presented, there is nothing before the Court other than the court approved plan which the Court finds constitutionally acceptable.

The plaintiff Taylor, while approving and recommending acceptance of the court approved plan, did also file Exhibits G (1) and G (2). These exhibits merely show that plans could be presented which are within acceptable deviation limits while at the same time giving the negro voters an even greater voter strength than does the court approved plan. These submissions merely tend to show that the Special Master did not draw a plan primarily to favor the negro population. These plaintiffs approve the court approved plan and hence no further comment is necessary as to them.

The same may be said of Exhibit H(i) filed by the Republican Party of Louisiana. They have no specific objection to the court approved plan but merely file Exhibit H(i) as evidence that other acceptable plans could also be presented. Attorney Murphy Bell, on behalf of the plaintiff Emmitt Douglas, State President of the NAACP, filed a "Motion to Submit Alternative Plan for East Baton Rouge Parish Senate Redistricting" wherein he proposed certain changes in Senate Districts 15 and 16. There was no evidence introduced in support of this motion nor was there any argument made in support thereof. A study of the proposal indicates that it in no way improves on the court approved plan and since this plaintiff specifically indicated

his approval of the court approved plan, no further consideration was given to this proposal.

Four exhibits were filed by the State, identified as State 1, 2, 3, and 4. No evidence or argument was presented in support of any of these exhibits. Exhibit State 1 simply proposes a change in the St. Tammany-Washington Parish area that would place Ward 7 of St. Tammany Parish in House District 74 and Ward 10 of St. Tammany Parish in House District 75. The obvious result of this proposed change would be to place two incumbent representatives in different House Districts rather than placing them in the same district as the court approved plan does. To accept this proposal would be gerrymandering in its most obvious form. The proposal is therefore rejected.

State Exhibit 2 concerns itself with Bossier Parish. It simply recommends some options that had previously been submitted to the Court in the Special Master's report and rejected. The principal objection raised is the placing of Bossier City in the same district with Shreveport wherein Bossier will be a "minority partner." No alternative to this set-up has been presented either orally or in writing. The Legislature, in its 1971 plan, handled this problem by devising a district composed of non-contiguous areas. This was ever objected to by the United States Attorney General when he rejected Acts 106 and 108 of 1971. No evidence or oral argument was presented in support of State Exhibit 2 and it is once again rejected.

State Exhibit 3 concerns House Districts 19 and 20 -- Richland, Madison, Franklin and Tensas Parishes. Neither the purpose of nor the reason for the suggested changes were presented to the Court either orally or in writing, and thus the proposal, if it was intended to be such, contained in State Exhibit 3, is rejected.

State Exhibit 4 is simply a "Brief of Amicus Curiae" and needs no comment.

The plaintiff Victor Bussie, who obviously appears in these suits for the purpose of protecting the interest of organized labor, just as others appeared to protect their seat in the Legislature or to protect the interests of other special interest groups, filed, through his attorney, Camille F. Gravel, Esq., Exhibits marked Bussie Exhibit 1 and Bussie Exhibit 2. Exhibit 1 is but a report of the Joint Legislative Reapportionment Committee which sets forth Proposed Plans A, B, and C, which were prepared by the Legislative Committee. These proposed plans have deviations as high as 12.34 per cent, and merely point up the fact that the Legislature was unable to apportion itself according to law. Bussie Exhibit 2 is merely a report of the Louisiana Legislative Council discussing the impact of Federal Court decisions on the question of reapportionment. Neither exhibit adds much if anything to this record. The fact is, though, that the Legislature did attempt to reapportion itself by passings Acts 106 and 108 of the 1971 Regular Session.

The plaintiff Bussie did not like the job the Legislature did, and he filed one of these suits complaining that the Legislative Acts were racially discriminatory, that they did not adhere to the one man, one vote rule, that the Plan of the Legislature was bad because it used varied and inconsistent approaches to the establishment of the new districts, i.e., it used both single member and multi-member districts, and that "pure politics" appeared to be the basis for the Legislature's Plan because it was created for the benefit of incumbents rather than for the benefit of the people. These are, of course, very laudable complaints. But when this Court adopted a plan that completely eliminated all of the undesirable things complained of by this plaintiff, the Court is asked by the same plaintiff to do what, in this Court's opinion, would be simply substituting one brand of politics for another. This, the Court refuses to do. Let's look for a moment at this plaintiff's complaints as set forth in the closing argument of his attorney, Mr. Gravel. Bear in mind that neither this plaintiff nor his counsel submitted a proposed plan to be substituted for the court approved plan. They merely complain generally, without offering solutions. Mr. Gravel argued that the court approved plan violated the Louisiana constitutional concept of apportionment based upon historical ward lines. He says that because precinct lines are subject to change, they should not be used as voting district boundaries.

But there is nothing sacred about State constitutional concepts of voting districts if those concepts produce districts that do not conform to the standards of the United States Constitution. The Supremacy Clause of the United States Constitution must prevail in such a situation. As we have seen, the so-called "historical" concepts referred to have permitted certain power bases to be maintained in the Louisiana Legislature; they have denied the citizenry of the State of Louisiana the benefits of the one man, one vote rule; they have, in the words of the plaintiff himself, allowed "pure politics" in many instances to reign supreme at the expense of the constitutional rights of the citizens of Louisiana; (witness the failure of the Louisiana Legislature to reapportion after each United States Census); and these "historical" concepts have successfully limited the number of negroes who could sit in the Louisiana Legislature to two in 75 years, despite the fact that according to the latest census figures, negroes make up 29.9 per cent of the total population and 21 per cent of the registered voters of the State of Louisiana. Simply stated, "historical" concepts must give way to constitutional rights even though those concepts happen to be embodied in the State Constitution. A state constitutional provision that prevents the exercise of federally guaranteed rights is simply unconstitutional. See Bannister v. Davis, 263 F. Supp. 202, 208 (D.C. La. - 1966). There is no

merit to plaintiff's contention that simply because "historical" ward lines have been crossed in the court approved plan, the plan itself should be unacceptable. Ward lines have indeed been crossed, and for the very good and valid purpose of eliminating the inequities complained of by Mr. Bussie in his complaint.

Mr. Gravel next says that the plan should conform to the "rational plan" set forth in the Louisiana Constitution, while still conforming to the one man, one vote rule. Our prior comments concerning "historical" concepts applies equally to this contention.

The next complaint is that the Court should have had the "parties to the litigation" fashion a plan instead of appointing a Special Master to do it. First of all, the appointment of the Special Master is specifically authorized by Rule 53 of the Federal Rules of Civil Procedure. Secondly, the very parties who appear to be the primary parties at interest in these suits, i.e., the Senators from New Orleans and Mr. Victor Bussie, all had an active part in the abortive attempt of the Legislature to reapportion itself in 1971. For this Court to have assumed for one moment that these parties could suddenly get together and come up with an acceptable plan after what was, with their assistance, presented to the people by the Louisiana Legislature, would have been presumptuous indeed. Neither this plaintiff nor his attorney ever suggested such a possibility until the final arguments were being heard in this case. Instead, in their suit they prayed that:

> "In a form and manner to be determined by the Court, a plan of reapportionment of the Louisiana Legislature be fashioned and put into effect so as to guarantee to petitioners in the forthcoming elections their rights and privileges as citizens of the United States, to equal protection of the laws secured them by the Constitution and laws of the United States and their civil rights, secured by law."

The Court did as these plaintiffs requested. In a form and manner determined by the Court, a plan of reapportionment was adopted which did secure to petitioners their constitutionally guaranteed rights. There is no merit to this complaint about who drafted the court approved plan.

Mr. Gravel's statement in argument that there are others more knowledgeable in the field of reapportionment deserves no comment. Suffice it to say that PAR has assisted in the apportionment of many public bodies throughout the State of Louisiana, and the Court was and is completely satisfied that Mr. Steimel is eminently qualified to perform as Special Master in this case.

Lastly, Mr. Gravel argues that there was "no reason to use single member districts" and that he "thinks it is unconstitutional." The simple answer to this is that single member districts have been approved and advocated by courts from the Supreme Court on down and 31 States have used single member districts as a means of reapportioning their legislatures. There is simply less dilution of voting strength of minority groups when single member districts are used, and, in the opinion of

this Court, they are the real answer to the true one man, one vote concept enunciated by the Supreme Court in Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964).

There is no legal basis for the objections raised by the plaintiff Victor Bussie. He offers no substitute plan. The prayer of his complaint has been answered in full. His objections to the court approved plan are without merit and are rejected.

This brings us to the last objection under consideration. Senator J. D. DeBlieux, of Baton Rouge, Louisiana, who is not a party to these suits, filed an amicus curiae brief and proposed plan for Senatorial Districts in East Baton Rouge Parish. Senator DeBlieux finds himself in the same new district with the other two Senators from East Baton Rouge Parish, and his proposed plan would extricate him from that predicament while leaving the other two Senators to run against each other. In all fairness to the DeBlieux plan, it must be said that it is equally as good as the East Baton Rouge Parish Plan contained in the court approved plan, but not necessarily any better. Deviations are slightly lower, and neither plan tends in any way to dilute the voting strength of minority groups. The DeBlieux plan does not divide Ward 3 whereas the court approved plan does. Both plans result in equally compact districts. Had the DeBlieux plan been timely presented to the Special Master, it might well have been incorporated in the plan submitted by the Special Master to the Court. But it was not.

The test is whether or not the plan presented to the Court meets constitutional requirements. The Special Master found facts and prepared a plan. His findings of fact simply cannot be disturbed unless found by the Court to be manifestly erroneous. There is no such finding here. One plan is equally as good as the other. The fact that one ward line is kept intact under the DeBlieux plan is not significant enough in this case to find manifest error in the plan of the Special Master. There is, in fact, another ward line broken in the DeBlieux plan that is not broken in the court approved plan. Thus, the Court finding no manifest error in the Senatorial District Plan for East Baton Rouge Parish as proposed by the Special Master, the subetituted plan proposed by Senator DeBlieux is rejected.

SUMMARY AND CONCLUSIONS

The actual objections raised during this hearing to the court approved Plan of Reapportionment for the Louisiana Legislature may be summarized as follows:

1. The plan fails to adhere to historical ward lines in forming some of the proposed new districts --- particularly in Orleans Parish.

2. The plan uses single member districts exclusively whereas objectors prefer the use of multi-member districts.

3. Jefferson Parish is "short changed" on representation in the House of Representatives and is improperly divided in such a manner as to place certain wards of the Parish with wards of adjoining parishes to create districts.

4. A Special Master should not have been used to assist the Court in fashioning a plan of reapportionment.

The answers to these objections may be summarized as follows:

1. The "historical" boundaries of voting districts in Louisiana reflect a history of racial discrimination. Adherence to the historical boundaries alluded to by objectors has been the prime reason why only two negroes have been allowed to sit in the Louisiana Legislature in the last 75 years. Historical boundaries and historical concepts, even when embodied in the State Constitution, must give way to federally guaranteed constitutional rights. The court approved plan has violated historical ward boundaries only where absolutely necessary to bring the proposed plan into full compliance with federal law.

2. Single member districts have been used exclusively in the court approved plan because they better protect the constitutional rights of Louisiana citizens. They minimize dilution of voting strength of minority groups and they make for uniformity throughout the State. Single member districts provide more compactness of districts and they result in less deviation from the one man, one vote requirement than do multi-member districts.

3. Jefferson Parish is simply not "short changed" in House representation. Their population entitles them to 9 2/3 representatives. The court approved plan actually gives them 10 plus members. Combining certain areas of Jefferson Parish with other parishes has been completely justified by

the necessity of complying with the one man, one vote rule. Where parts of Jefferson Parish are combined with other parishes, every consideration was given to population, economic and social interests of the areas, and accessibility of one part of the district to the other.

4. The use of the Special Master is authorized by Rule 53 of the Federal Rules of Civil Procedure. The Special Master did not have the final approval or disapproval of the plan. He submitted a plan with certain alternatives. This Court, after many long hours of study, made the final determination of the plan which it was to adopt as its own.

In conclusion, it is the opinion of this Court that the Reapportionment Plan for the Louisiana Legislature approved and adopted by this Court on August 24, 1971, meets all constitutional requirements. There is much evidence in the record of this case to support that plan, and there is no evidence of any consequence to justify substituting any of the proposed plans therefor. The question is not whether another plan equally as good can be drawn. The Court takes cognizance of the fact that there are many different ways in which the Legislature could be apportioned and still meet constitutional requirements. This Court simply concludes that the plan presented by the Special Master and approved by the Court does, in fact, meet all constitutional requirements. On the other hand, the

Court concludes that the proposed substitute plans do not, in this case, meet constitutional requirements. The Special Master, after lengthy hearings conducted over a four day period, made his findings of fact and based thereon he prepared a plan. It is well settled that the findings of fact of the Special Master are binding upon the Court unless found to be clearly erroneous. Locklin v. Day-Glo Color Corp., 429 F.2d 873 (CA Ill. - 1970); Leader Clothing Co. v. Fidelity and Casualty Co. of New York, 237 F.2d 7 (CA Kan. - 1956); Eastern Fireproofing Co. v. U. S. Gypsum Co., 50 F.R.D. 140 (D.C.-Mass. - 1970). There is no showing of any kind that the Master's findings of fact, upon which the court approved plan is based, was in any way erroneous. The ultimate adoption of the plan was made by the Court after concluding that, as a matter of law, the plan met all constitutional requirements. After these most recent hearings, this Court is more convinced than ever that the Reapportionment Plan for the Louisiana Legislature first approved by it on August 24, 1971, should once again be approved and adopted without change, and that its immediate implementation should be ordered.

Judgment will be entered accordingly and an order will be issued simultaneously therewith implementing said plan and providing for the necessary qualifying period for candidates who wish to seek election to the Louisiana Legislature in the upcoming elections.

Baton Rouge, Louisiana, September 10, 1971.

UNITED STATES DISTRICT JUDGE

APPENDIX B

U. S. COURT OF APPEALS
FILED
SEP 14 1971
EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 71-2783

VICTOR BUSSIE ET AL.,

Plaintiffs-Appellees-Appellants,

vs:

JOHN J. McKEITHEN, Governor of the State of Louisiana, et al.,

Defendants-Appellants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

(September 1971)

Before WISDOM, COLEMAN, and SIMPSON, Circuit Judges.

BY THE COURT:-

This expedited appeal is from a judgment of the district court under our remand of Sept. 4, 1971 ordering the district court to conduct a hearing on the Master's proposed plan for reapportionment of the Louisiana legislature.

1. We hold that the district court correctly determined that the case was properly before him as a single judge.

2. We approve the dates, September 15 and 16, 1971, set by the district court for the qualification of candidates for the Louisiana legislature.

3. We affirm the judgment of the district court with the following modifications:

a) The boundaries of Senate districts 2, 3, 4, and 5 are modified so as to conform with the defendants-appellants' alternate plan for those districts.

(2)

b) The boundaries of Senate districts 14, 15, and 16 are modified so as to conform with the DeBlieux alternate plan for those districts.

c) For the purposes of the forthcoming election only, we approve the reapportionment of Jefferson Parish as set forth in the Master's plan and adopted by the district court. This approval is without prejudice to any challenge to the apportionment of Jefferson Parish for future elections.